IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10068 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE A.R.DAVE
and
HON'BLE MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

A.K.PATEL & CO (CONSTRUCTION) PVT. LTD.

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 10068 of 2004
MR TANVISH U BHATT for Petitioner No. 1
MR HD DAVE, ASST.GOVERNMENT PLEADER for
Respondent No. 1-4

CORAM : HON'BLE MR.JUSTICE A.R.DAVE
and
HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 29/09/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE A.R.DAVE)

Amendment granted.

RULE. Service of rule is waived by learned AGP Shri H.D. Dave for the respondents. At the request of the learned advocates, the petition is finally heard today.

2. The grievance ventilated in the petition is with regard to an order dated 31.3.2004, whereby a sum of Rs. 4,43,064/- has been demanded by way of sales tax, interest thereon and penalty for the Assessment Year 1999-2000. The assessee has also been aggrieved by an order dated 27.7.2004, whereby the Rectification Application filed by the petitioner has been rejected.

3. The facts giving rise to the present petition, in a nutshell, are as under :

3.1 The petitioner filed his return under the provisions of the Gujarat Sales Tax Act, 1969 (hereinafter referred to as 'the Act') for the year 1999-2000. Respondent No. 3 passed an assessment order dated 31.3.2004, whereby a sum of Rs. 4,43,064/- has been demanded by way of sales tax, interest on the tax and penalty, after giving credit of the amount which had already been paid by the petitioner. In the said order, it has been recorded that a sum of Rs. 18,27,745/-, which was deducted by way of tax at source from the income of the petitioner-assessee, had not been given credit of. The petitioner was aggrieved as credit with regard to the aforestated amount had not been given to it. In the circumstances, the petitioner filed a rectification application under sec. 72 of the Act. The said rectification application has been rejected by respondent No. 3 by an order dated 27.7.2004. While rejecting the application, respondent No. 3 has stated that the case of the petitioner had been forwarded to the Dy. Commissioner of Sales Tax, i.e., respondent No. 4, for pre-audit and respondent No. 4 had instructed respondent No. 3 to file the matter and, therefore, the application submitted by the petitioner for rectification had been rejected.

4. It has been submitted by learned advocate Shri Bhatt appearing for the petitioner that, in fact, a sum of Rs. 18,27,745/- had been deducted from the receipt of the petitioner by way of sales tax for the assessment year 1999-2000 and, therefore, the said amount ought to

have been adjusted against the amount of sales tax payable for the said year and the balance amount ought to have been refunded to the petitioner. It has been further submitted by him that no reason for rejection of the rectification application has been stated by respondent No. 3 in the impugned order. Moreover, he has submitted that respondent No. 4, in pursuance of whose instructions the rectification application had been rejected, had never heard the petitioner and the petitioner never got an opportunity to plead its case before respondent No. 4, who had in fact rejected the rectification application and the request for refund made by the petitioner.

5. It has been further submitted by him that principles of natural justice had been violated because respondent No. 4, who had taken the final decision with regard to rejection of the application, had never heard the petitioner. Moreover, respondent No. 3, who was supposed to decide the rectification application, had not taken the final decision, but the decision had been taken by someone else, who had never heard the petitioner. It has been, therefore, submitted by him that the impugned order dated 27.7.2004 is bad in law and it should be quashed and set aside and the respondent authorities should be directed to refund the amount, which had already been paid on behalf of the petitioner by way of sales tax by its dealers.

6. It has been thereafter submitted by him that the impugned assessment order dated 31.3.2004 is also bad in law also because, while framing the assessment, the concerned Assessing Officer was not having the return submitted by the petitioner and without perusing the documents, which had been annexed to the return, the said order had been passed. It has been also submitted that as the said order of assessment had been passed without perusal of proper record, the said order is bad in law, as it suffers from the vice of non-application of mind.

7. In pursuance of notice issued by this court, learned AGP Shri Hasit Dave has appeared for the respondents. It has been submitted by him that, in fact, when the assessment was framed on 31.3.2004, the original return filed by the petitioner for the assessment year in question was not available. It is his case that the petitioner had been requested on several occasions to furnish a copy of the return for the said period, but a copy of the return had not been filed by the petitioner. In the circumstances, respondent No. 3 was constrained to frame the assessment on 31.3.2004. It has been

submitted by him that in absence of the return, credit with regard to the amount of sales tax deducted had not been given to the petitioner. It has been fairly submitted by him that though the return had been misplaced or could not be found out, other accompaniments including the tax deduction certificates, were very much on record, but in absence of the return, credit of the amount of tax deducted had not been given to the petitioner. Of course, learned advocate Shri Bhatt appearing for the petitioner has denied this fact. It has been submitted by him that a copy of the return had already been furnished to respondent No. 3 before the assessment had been framed on 31.3.2004 but possibly that copy was also lost by the assessing officer.

8. In the aforestated circumstances, the petitioner was constrained to submit a rectification application under the provisions of sec. 72 of the Act. The said application has also been rejected and, therefore, the petitioner has approached this court.

9. Upon hearing the learned advocates and upon perusal of the record, it is clear that without having the original return, the assessment had been framed on 31.3.2004 under the provisions of sec 41(3) of the Act. It is also not in dispute that tax to the tune of Rs. 18,27,745/- had been paid on behalf of the petitioner by other dealers for the assessment year in question and credit of the said amount of tax deducted at source had not been given by the Assessing Officer.

10. It is also not in dispute that when the rectification application was submitted by the petitioner to respondent No. 3, respondent No. 3 had referred the matter to respondent No. 4 for taking decision whether the credit of the amount of tax deducted at source should be given to the petitioner. It is also not in dispute that respondent No 4, without hearing the petitioner or without assigning any reason, instructed respondent No. 3 to reject the rectification application, and as per his instructions, the rectification application was rejected on 27.7.2004.

11. In our opinion, without assigning any reason or without hearing the petitioner, it was not proper on the part of the respondent authorities to reject the rectification application, whereby the petitioner had prayed that credit of the amount of tax deducted at source should be given to it. It is a settled legal position that when a quasi-judicial authority passes any order, the authority should assign reasons so that the

appellate authority or Court can examine the validity of the order by perusing the reasons assigned by the lower authority.

12. We are supported by a judgment delivered by the Hon'ble Supreme Court in the case of The Siemens Engineering and Manufacturing Co. of India Ltd. v. The Union of India and another, AIR 1976 SC 1785. The Hon'ble Supreme Court has observed in the said judgment that a quasi-judicial order must be supported by reasons. It has been observed by the Hon'ble Supreme Court that the rule requiring reasons to be recorded is like the principle of audi alteram partem, a basic principle of natural justice, which must inform every quasi-judicial process. It has been further observed by the Supreme Court that this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law. In our opinion, the aforesaid principle laid down by the Hon'ble Supreme Court has been clearly violated in the instant case by the respondents because neither respondent No.4 heard the petitioner before taking the impugned decision, nor he recorded the reasons for which the application of the petitioner had been rejected.

13. We are, therefore, constrained to quash and set aside the impugned order, whereby the application submitted under sec. 72 of the Act has been rejected.

14. It is also pertinent to note that the order of assessment dated 31.3.2004 had been passed by respondent No. 3 without the sales tax return for the year in question. It is very clear that respondent No. 3, namely, the Assessing Officer, was neither having the original nor a copy of the return, which had been filed by the petitioner. It is really surprising as to how the Assessing Officer, namely, respondent No. 3, assessed the tax without having the return.

15. Looking to the peculiar facts of the case, we also quash and set aside the assessment order dated 31.3.2004 framed by respondent No. 3 and direct him to frame fresh assessment for the said period within two months from the date of receipt of this order. It has been fairly submitted by the learned AGP that a duplicate return for the said assessment period has been subsequently filed by the petitioner, and on the basis of the said return and the documents annexed thereto, the Assessing Officer shall complete the assessment within the period specified hereinabove. While framing the assessment, the Assessing Officer shall pass an order

with regard to refund of the amount, if any, in favour of the petitioner, because according to the petitioner, a sum of Rs. 18,27,745/- has already been paid to the respondent authorities by way of tax on behalf of the petitioner for the assessment year in question. If credit of the said amount is not to be granted in toto, the Assessing Officer shall record the reasons for the same. If, for any reason, respondent No. 3 is to refer the matter to respondent No. 4, and if respondent No.4, namely, the Dy. Commissioner of Sales Tax, proposes to take a decision against the petitioner, he shall hear the petitioner before taking final decision.

16. We also desire that the Commissioner of Sales Tax should look into this case so as to find out how the original return was lost and the assessment was framed by respondent No. 3 without even a copy of the return, so that such irregularities may not take place in future.

For the reasons recorded hereinabove, the petition is allowed. The impugned orders dated 31-03-2004 and 27-07-2004 are quashed and set aside. Fresh order shall be passed as directed hereinabove. Rule is made absolute with no order as to costs.

(A.R. Dave, J.)

(K.A. Puj, J.)

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